

**Construction Contract**

**U.S. Department of Housing  
and Urban Development**

Project Name: \_\_\_\_\_

Cost Plus Contract \_\_\_\_\_

HUD Project No.: \_\_\_\_\_

Lump Sum Contract \_\_\_\_\_

**THIS AGREEMENT**, made the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between  
\_\_\_\_\_  
(hereinafter called the "Contractor") and  
\_\_\_\_\_  
(hereinafter called the "Owner").

**The Contractor and the Owner agree as follows:**

**Article 1: Scope of Contract**

A. The Contract between the parties is set forth in the "Contract Documents," which consist of this Agreement, the Drawings and the Specifications, which include the current edition of AIA Document A201, "General Conditions of the Contract for Construction", expressly excepting those provisions which mandate binding arbitration. A detailed identification of the Contract Documents is set forth in Article 2 below. The provisions of this Agreement take precedence over all inconsistent provisions in the said AIA Document A201. This Contract constitutes the entire agreement between the parties, and any previously existing contract concerning the work contemplated by the Contract Documents is hereby revoked.

B. Except to the extent specifically indicated in the Contract Documents to be the responsibility of others, the Contractor shall furnish all of the materials and perform all of the work, within the property lines, shown on, and in accordance with, the Drawings and Specifications.

## **Article 2: Identification of Contract Documents**

A. The Contract Documents, except for Modifications issued after execution of this Agreement, are identified as follows:

1. This Agreement. If designated above as Cost Plus Contract, Articles 4 and 13 are applicable to this Agreement. If designated above as Lump Sum Contract, Articles 4A and 13A are applicable to this Agreement.
2. The General Conditions are set forth in the 1997 edition of the General Conditions of the Contract for Construction, AIA Document A201-1997, except those provisions mandating binding arbitration.
3. The Supplementary Conditions are set forth in the Project Manual dated \_\_\_\_\_ , identified as follows:

Document	Title	Pages
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4. The Specifications are those contained in the Project Manual dated as in subparagraph 3, and are as follows:

Section	Title	Pages
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5. The Drawings are as follows, and are dated as shown below:

Number	Title	Pages
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6. The Contractor's and/or Mortgagor's Cost Breakdown, Form HUD-2328, approved by HUD on \_\_\_\_\_ date.

7. The Incentive Payment for Early Completion Computation Form, Form HUD-\_\_\_\_\_, if applicable.

8. The Prevailing Wage Determination is No. \_\_\_\_\_, dated \_\_\_\_\_.

B. The Drawings and the Specifications were prepared by \_\_\_\_\_ (hereinafter called the "Design Architect"). The architect administering the Construction Contract work is \_\_\_\_\_ (hereinafter called the "Supervisory Architect.").

C. A master set of the Drawings and of the Project Manual, identified by the signatures of the Owner, the Contractor, the Design Architect, the Supervisory Architect, and the Contractor's Surety or Guarantor, have been placed on file with HUD, and shall govern in all matters which arise with respect to the Contract Documents.

D. Changes in the Drawings, Specifications, or other terms of the Contract Documents, or orders for extra work, or changes by altering or adding to the work, or which will change the design concept, may be effected only with the prior written approval of the Owner's Lender (more particularly identified below and hereinafter referred to as the "Lender") and HUD, and under such conditions as either the Lender or HUD may establish.

### **Article 3: Time**

A. The work to be performed under this Contract shall be commenced within \_\_\_\_ days of this Agreement, and shall reach Final Completion by \_\_\_\_\_. 20\_\_.

B. The date of Final Completion shall be the date the HUD representative signs the final HUD Representative's Trip Report, provided that the trip report is subsequently endorsed by the Chief Architect. Final Completion includes all construction requirements, including but not limited to completion of all punch list items, executed HUD Form 92485, Permission to Occupy - Property Mortgages, As-Built Survey and Surveyor's Report, As-Built Plans and Specifications, warranties, and execution and acceptance of all change orders.

C. The time by which the work shall be completed may be extended in accordance with the terms of the said AIA General Conditions only with the prior written approval of HUD.

D. The Contractor shall correct any defects due to faulty materials or workmanship which appear within one year from the date of Final Completion.

E. If the work is not brought to Final Completion in accordance with the Drawings and Specifications, including any authorized changes, by the date specified above, or by such date to which the Final Completion time may be mutually extended in accordance with HUD administrative requirements, the maximum sum stated in Article 4, Subpart A. below shall be reduced by \$\_\_\_\_\_, as liquidated damages, for each day of delay until the actual date of Final Completion. When the Owner cost certifies to HUD, the actual cost of interest, taxes, insurance, mortgage insurance premiums, and construction and permanent loan extension fees, as approved by HUD, for the period from the scheduled date of Final Completion through the date construction was actually completed, shall be determined. The lesser of the liquidated or actual

damages shall be applied. The applicable amount shall be reduced by the project's net operating income, as determined by HUD, for the damage period.

F. Where there is no identity between the Owner and Contractor, the parties may complete the provisions set forth in Articles 4 and 4A below with respect to "Incentive Payment", for payment of an additional sum to the Contractor as an incentive for completing the project earlier than the completion date specified in Article 3, or by such date to which the Agreement completion date may be extended. If the work is brought to Final Completion before the date specified in this Agreement, the contract sums stated in Article 4 and 4A below shall be increased, as indicated, by an incentive payment calculated in accordance with HUD requirements for the Incentive Payment Calculation . The Contractor will not be entitled to any incentive payment resulting from early completion if HUD determines that the Contractor's cost certification is fraudulent or materially misrepresents the Contractor's Actual Cost of Construction.

#### **Article 4: Contract Sum -- Cost Plus Contract**

A. Subject to the provisions hereinafter set out, the Owner shall pay to the Contractor for the performance of this Contract the following items in cash:

- (1) The Actual Cost of Construction as defined in Article 13 below; plus
- (2) Builder's Profit of \$ \_\_\_\_\_ .

In no event, however, shall the total cash payable pursuant to this paragraph (A) exceed \$\_\_\_\_\_ .

B. In addition to any cash fee provided for in paragraph (A), the Owner shall pay to the Contractor by means other than cash, the following:

- (1) A note in the form prescribed by HUD in the amount

of \$ \_\_\_\_\_ .

(2) \_\_\_\_\_

C. If, upon completion, the Contractor shall have received cash payments in excess of (a) the Actual Cost of Construction, plus (b) the Builder's Profit, plus the additional amount to be paid under the provisions of paragraph (2), all such excess shall be refunded to the Owner.

D. Incentive Payment:

(1) If the work is completed prior to the time for completion specified in this Agreement, the Owner shall make an incentive payment to the Contractor. The amount of the payment shall be determined according to Exhibit \_\_\_\_, attached hereto, entitled Incentive Payment Computation.

(2) If, upon completion, the Contractor shall have received cash payments in excess of (a) the Actual Cost of Construction, plus (b) the Builder's Profit, plus the incentive payment under the provisions of paragraph 1 above, all such excess shall be refunded to the owner.

(3) No incentive payment will be allowed on cost savings in costs disallowed by HUD or if the Contractor's cost certification is found by HUD to be either fraudulent or to materially misrepresent the Actual Cost of Construction.

**Article 4A: Contract Sum -- Lump Sum Contract**

A. The Owner shall pay the Contractor for the performance of the

contract, hereinafter provided, the sum of \$ \_\_\_\_\_  
( \_\_\_\_\_ dollars and \_\_\_\_\_/100).

B. Incentive Payment: If the work is completed prior to the time for completion specified in this Agreement, the Owner shall pay to the Contractor, in addition to the contract sum stated herein, an amount equal to \_\_\_\_% (not to exceed 50%) of the amount by which the sum of HUD's estimates of interest, real estate taxes, insurance and mortgage insurance premium during construction, in the total amount of \$ \_\_\_\_\_ ,\* exceeds the Owner's certified cost of these same items as approved by HUD through the final completion date. (\*insert that portion of the sum of interest, taxes, insurance, and Mortgage insurance Premium that appear in Section G of Form HUD-92264 attributable to the construction period. If there has been a change in the interest rate charged for the construction period, the dollar amount included in Section G of HUD-92264 must be adjusted. The adjusted amount must be reflected in the savings computation). No incentive payment will be allowed on savings in costs disallowed by HUD or if the Contractor's cost certification is found by HUD to be either fraudulent or to materially misrepresent the Actual Cost of Construction.

## **Article 5: Requisition and Payment Procedures**

A. Each month after the commencement of work hereunder, the Contractor shall make a monthly request on Form HUD-92448 for payment by the Owner for work done during the preceding month. Each request for payment shall be filed at least \_\_\_\_\_ days before the date payment is desired. Subject to the approval of the Lender and HUD, the Contractor shall be entitled to payment thereon in an amount equal to (1) the total value of classes of the

work acceptably completed; plus (2) the value of materials and equipment not incorporated in the work, but delivered to and suitably stored at the site; plus (3) the value of components stored off-site in compliance with applicable HUD requirements; less (4) 10 percent holdback and less prior payments. The “values” of (1), (2) and (3) shall be computed in accordance with the amounts assigned to classes of work in the “Contractor’s and/or Mortgagor’s Cost Breakdown,” attached hereto as Exhibit “A”.

B. The balance due the Contractor hereunder shall be payable upon the expiration of 30 days after the Contractor has completed each and every of its obligations under the Contract Documents, including the execution and submission of all final advance documents required by HUD.

C. With its final application for payment by the Owner, the Contractor shall disclose, on a form prescribed by HUD, all unpaid obligations contracted in connection with the work performed under this Contract. The Contractor agrees that within 15 days following receipt of final payment, it will pay such obligations in cash and furnish satisfactory evidence of such payment to the Owner.

D. The balance due the Contractor hereunder shall be payable upon the expiration of 30 days after the work hereunder is fully completed, provided the following have occurred. (1) All work hereunder requiring inspection by municipal or other governmental authorities having jurisdiction has been inspected and approved by such authorities and by the rating or inspection organization, bureau, association or office having jurisdiction; (2) All certificates of occupancy, or other approvals, with respect to all units of the project have been issued by State or local governmental authorities having jurisdiction; and (3) Permission(s) to Occupy (Form HUD-92485) for all units of the project have been issued by HUD.



## **Article 6: Receipts, Releases of Liens & Payments for Materials & Equipment**

A. The Contractor agrees that within 15 days following receipt of each monthly payment, it will pay in full and in cash all obligations for work done and materials, equipment and fixtures furnished through the date covered by such monthly payment. Except, however, the Contractor may withhold from the amount due each subcontractor an amount reflecting percentages actually retained from payments to the Contractor on account of such subcontractor's portion of the work.

B. The Owner may require the Contractor to attach to each request for payment its acknowledgment of payment and all subcontractors' and material supplier's acknowledgments of payment for work done and materials, equipment and fixtures furnished through the date covered by the previous payment.

C. The Contractor agrees that no materials or equipment required by the Specifications will be purchased under a conditional sale contract or with the use of any security agreement or other vendor's title or lien retention instrument.

D. Concurrently with the final payment, the Owner may require the Contractor to execute a waiver or release of lien for all work performed and materials furnished hereunder, and may require the Contractor to obtain similar waivers or releases from all subcontractors and material suppliers.

## **Article 7: Obligations of Contractor**

A. The Contractor shall furnish, at its own expense, all building and other permits, licenses, tools, equipment and temporary structures necessary

for the construction of the project. The Contractor shall give all required notices and shall comply with all applicable codes, laws, ordinances, rules and regulations, and protective covenants, and with the current regulations of the National Board of Fire Underwriters, wherever applicable. The Contractor shall comply with the provisions of the Occupational Safety and Health Act of 1970. The Contractor shall immediately notify HUD of the delivery of all permits, licenses, certificates of inspection, certificates of occupancy, and any other such certificates and instruments required by law, regardless of to whom issued, and shall cause them to be displayed to HUD upon request.

B. If the Contractor observes that the Drawings and Specifications are at variance with any applicable codes, laws, ordinances, rules or regulations, or protective covenants, it shall promptly notify the Supervisory Architect in writing, and any necessary changes shall be made as provided in this Contract for changes in the Drawings and Specifications. If the Contractor performs any work knowing it to be contrary to such codes, laws, ordinances, rules or regulations, or protective covenants, without giving such notice to the Supervisory Architect, it shall bear all costs arising therefrom.

C. Upon completion of construction, the Contractor shall furnish to the Owner a topographic land survey map showing the location on the site of all improvements constructed thereon, and showing the location of all water, sewer, gas and electric lines and mains, and of all existing utility easements. Such survey map shall be prepared by a licensed surveyor who shall certify that the work is installed and erected entirely upon the land covered by the mortgage and within any building restriction lines on said land, and does not overhang or otherwise encroach upon any easement or right-of-way of others. Such survey shall be accompanied by a Surveyor's Report in the form required by HUD. In addition, the Contractor shall furnish additional surveys when required by the Owner for any improvements, including structures and

utilities, not heretofore located on a survey. The Contractor shall furnish copies of such survey required hereunder for the Lender and HUD. The Contractor shall provide progress survey maps from time-to-time which show the improvements to be entirely within the property and set-back boundaries, and not encroaching upon any easements, as part of applications for payment. The Contractor shall provide updated final survey maps and Reports for Final Closing , in accordance with HUD requirements, including but not limited to Federal regulations, handbooks, and relevant HUD administrative guidance.

D. The Contractor shall assume full responsibility for the maintenance of all landscaping which may be required by the Drawings and Specifications until such time as both parties to this Contract shall receive written notice from HUD that such landscaping has been finally completed. The Owner hereby agrees to make available to the Contractor, for such purpose, without cost to the latter, such facilities as water, hose and sprinkler.

### **Article 8: Assurance of Completion**

The Contractor shall furnish to the Owner assurance of completion of the work in the form of (specify) \_\_\_\_\_  
\_\_\_\_\_. Such assurance of completion shall run to the Owner and the Lender as obligees and shall contain a provision whereby the surety agrees that any claim or right of action that either the Owner or the Lender might have thereunder may be assigned to HUD.

### **Article 9: Waiver of Lien or Claim**

A. The Contractor shall not file a mechanic's or materialman's lien or maintain any claim against the Owner's real estate or improvements for or on

account of any work done, labor performed or materials furnished under this Contract, and shall include in each subcontract a clause which shall impose this requirement on the subcontractor.

B. In jurisdictions where permitted by law, the Owner may require the Contractor to execute a Waiver of Liens which shall be recorded prior to the commencement of construction. The Contractor for itself, subcontractors, suppliers, materialmen, and all persons acting through or under it, shall agree not to file or maintain mechanics' lien or claim against the property described herein, on account of work done, labor performed or materials provided by them.

#### **Article 10: Right of Entry and Interpretation of Contract Documents**

A. The Lender and its agents or assigns and HUD, shall at all times during construction, have the right of entry and free access to the project and the right to inspect all work done and materials, equipment and fixtures furnished, installed or stored in and about the project. For such purpose, the Contractor shall furnish such enclosed working space as the Lender or HUD may require and find acceptable as to location, size, accommodations and furnishings.

B. HUD shall also have the right to interpret the Contract Documents and to determine compliance therewith.

#### **Article 11: Assignments, Subcontracts and Termination**

A. This Contract shall not be assigned by either party without the prior

written consent of the other party, the Lender and HUD, except that the Owner may assign the Contract, or any rights hereunder, to the Lender or HUD.

B. The Contractor shall not subcontract all of the work to be performed hereunder without the prior written consent of the Owner, the Lender and HUD.

C. Upon request by the Owner, the Lender or HUD, the Contractor shall disclose the names of all persons with whom it has contracted or will contract with respect to work to be done and materials and equipment to be furnished hereunder.

D. The Contractor understands that the work under this contract is to be financed by a building loan to be secured by a mortgage and insured by HUD, and that the terms of said loan are set forth in a Building Loan Agreement between the Owner as Borrower and \_\_\_\_\_ as Lender.

E. The Contractor further understands that said Building Loan Agreement provides that, in the event of the failure of the Owner to perform its obligations to the Lender thereunder, the Lender may, as attorney-in-fact for the Owner, undertake the completion of the project in accordance with this Contract. In the event the Lender elects not to undertake such completion, the Contractor's obligations under this contract shall terminate.

## **Article 12: Roles of HUD and Lender**

HUD is the insurer of the Lender's loan made to finance the construction identified herein, pursuant to the Building Loan Agreement referenced above in Article 11. Nothing provided herein, no action or inaction of the parties to this contract, or actions or inaction by any third parties, shall impute to HUD or the Lender status as a party to this Agreement.

### **Article 13: Certification of Actual Cost -- Cost Plus Contract**

A. The "Actual Cost of Construction," as used in Article 4 above, shall include all items of cost and expense incurred by the Contractor in the performance of this Contract and shall include an allowance for general overhead in the amount set forth in the Contractor's and/or Mortgagor's Cost Breakdown. Allowable items of cost and expense incurred by the Contractor in the performance of this Contract shall include costs and expenses of labor, materials for construction, equipment and fixtures, field engineering, sales taxes, workmen's compensation insurance, social security, public liability insurance, general requirements and all other expenses directly connected with construction. The value of any kick-backs, rebates or discounts received or receivable in connection with the construction of the project shall be subtracted from all items of cost and expense. Any cost or expense attributable to maintaining the Contractor's working capital is not to be included within the "Actual Cost of Construction."

B. The Contractor shall keep accurate records of account of the said Actual Cost of Construction, and shall, upon demand, make such records and invoices, receipts, subcontracts and other information pertaining to the construction of the project available for inspection by the Owner and HUD.

C. With its final application for payment, the Contractor shall furnish to the Owner a completed "Contractor's Certificate of Actual Cost," which shall be accompanied and supported by an independent public accountant's certificate as to actual cost in form acceptable to HUD.

D. The Contractor shall include in all subcontracts, equipment leases and purchase orders a provision requiring the subcontractor, equipment lessor or supplier to certify its costs incurred in connection with the project, in the

event HUD determines there is an identity of interest between either the Owner or the Contractor and any such subcontractor, equipment lessor or supplier.

### **Article 13A: Cost Certification -- Lump Sum Contract**

In the event HUD determines that there is an identity of interest between the Contractor and the Owner, the Contractor shall certify, on a form prescribed by HUD, its cost incurred in the performance of the work under this contract.

### **Article 14: Labor Standards**

A. **Applicability.** The Project or Program to which the construction work covered by this contract pertains is being assisted or insured by the United States of America and the following Federal Labor Standards Provisions are included in this Contract or related instrument pursuant to the provisions applicable to such Federal assistance or insurance.

B. 1. (i) **Minimum Wages.** All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment

computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1 (b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein. Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii)) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:



- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall

refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs A.1.(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. **Withholding.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. **Payrolls, records, and certifications.**

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of

1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1 (b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1 (b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii)(a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR Part 5.5(a)(3)(i). This information may be submitted

in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- (1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR Part 5.5(a)(3)(i) and that such information is correct and complete;
- (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;
- (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph A.3.(ii)(b) of this section.

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph A.3.(i) of this section available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR Part 5.12.

#### **4. Apprentices and Trainees.**

(i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in

his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by

the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman's hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the



Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) **Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. **Compliance with Copeland Act Requirements.** The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

6. **Subcontracts.** The contractor or subcontractor will insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as HUD or its designee may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.

7. **Contract termination and debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor or a subcontractor, as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

**10. Certification of Eligibility.**

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in

part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration ... makes, utters or publishes any statement, knowing the same to be false . . . shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

### **C. Contract Work Hours and Safety Standards Act.**

1. **Applicability and Definitions.** This subsection C of Article 14 is applicable only if a direct form of federal assistance is involved, such as Section 8, Section 202/811 Capital Advance, grants etc. As used in this subsection, the terms "laborers" and "mechanics" include watchmen and guards.

2. **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

3. **Violation; liability for unpaid wages and liquidated damages.** In the event of any violation of the immediately preceding paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in

violation of such paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

**4. Withholding for unpaid wages and liquidated damages.** HUD or its designee shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from any moneys payable on account of work performed by the contractor or subcontractor under any such contract, or under any other Federal contract with the same prime contractor, or under any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (3) of this paragraph.

**5. Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraphs (1) through (5) of this subsection C and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in such paragraphs (1) through (5).

#### **D. Certification**

The Contractor is required to execute the Contractor's Prevailing Wage Certificate on page 2 of form HUD-92448 as a condition precedent to insurance

by HUD of that certain mortgage loan, or an advance thereof, made or to be made by the Lender in connection with the construction of the project.

## **Article 15: Equal Employment Opportunity**

A. **Applicability.** This Article 15 applies to any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee.

B. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, disability or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Contractor agrees to post in conspicuous places available to employees and applicants for employment notices to be provided setting forth the provisions of this nondiscrimination clause.

C. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, disability, or national origin.

D. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided advising the said labor union or workers representatives of the Contractor's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

E. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965 and of the rules, regulations, and relevant orders of the Secretary of Labor.

F. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

G. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulations or order of the Secretary of Labor, or as otherwise provided by law.

H. The Contractor will include the portion of the sentence immediately preceding paragraph A and the provisions of paragraphs A through G in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon

each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance. *Provided, however,* that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Secretary of Housing and Urban Development or the Secretary of Labor, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**Article 16: Equal Opportunity for Businesses and Lower Income Persons Located Within the Project Area**

A. This Article 16 is applicable to projects covered by Section 3, as defined in 24 CFR Part 135.

B. The work to be performed under this contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701 u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the unit of local government or the metropolitan area (or non-metropolitan county) as determined by the Secretary of Housing and Urban Development in which the projects located and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the same metropolitan area (or non-metropolitan county) as the project.

### **Article 17: Health and Safety**

A. No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

B. The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 CFR Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, 40 USC 321 et seq.

C. The Contractor shall include the provisions of this Article 17 in every subcontract so that such provisions will be binding on each subcontractor. The Contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development of the Secretary of Labor shall direct as a means of enforcing such provisions.

### **Article 18: Designation of Representatives**

A. The Owner hereby designates \_\_\_\_\_ as its representative for all communications involving work performed pursuant to this Agreement.

B. The Contractor hereby designates \_\_\_\_\_ as its representative for all communications involving work to be performed pursuant to this Agreement.

### **Article 19: Disclosure of Collateral Agreements**

A. By signature below the Contractor represents, for itself and any person or entity with which Contractor is affiliated, that there are no collateral



agreements with the Owner or any other parties providing for additional compensation for the work to be performed pursuant to this contract, except as listed immediately following:

[Insert list of all collateral agreements here.]

B. Any such listed agreement was previously disclosed to HUD and to the Lender and permission for each such agreement has been provided in writing by HUD and by the Lender. The permission for said collateral agreement(s) is attached hereto as Exhibit \_\_\_\_.

C. No collateral agreement disclosed to HUD and/or Lender shall have the effect of increasing the HUD-approved construction amount of \$\_\_\_\_\_. Disclosure of any collateral agreement shall not impute any obligation on the part of the Lender or HUD, to the contractor, Owner, or other third-party, financial or otherwise. Contractor acknowledges that full disclosure of collateral agreements, if any, is to permit accurate determination of the HUD-insured mortgage amount. Failure of a Contractor to disclose any collateral agreement(s) with the Owner or any third-party with respect to HUD Project No.\_\_\_\_\_ shall constitute grounds for administrative sanctions, civil or criminal penalties, as appropriate.

## **Article 20: Headings and Titles**

Any heading, section title, paragraph or part of this Agreement is intended for convenience only, and is not intended , and shall not be

construed, to enlarge, restrict, limit or effect in any way the construction, meaning, or application of the provisions thereunder, or under any other heading or title.

**IN WITNESS** WHEREOF, the parties to these presents have executed this contract in six (6) counterparts, each of which shall be deemed an original, as of the year and day first above mentioned.

(Seal) Attest:

Owner

(Seal) Attest:

Contractor

**Note: If Contractor or Owner is a corporation, Secretary should attest.**

***Document revised 3/24/2000 Steve***